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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~140.~~ 126.

THE UNITED STATES EX REL. RALPH W. DRURY AND JOHN DOWD, APPELLANTS,

vs.

EDWARD LEWIS, WARDEN OF THE COMMON JAIL OF ALLEGHENY COUNTY, PENNSYLVANIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED NOVEMBER 25, 1904.

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SUPREME COURT OF THE UNITED STATES.

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No. 440.

THE UNITED STATES EX REL. RALPH W. DRURY AND JOHN DOWD, APPELLANTS,

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1 Among the rolls, records, and judicial proceedings had in the Circuit Court of the United States in and for the Western District of Pennsylvania, at No. 1 of May term, 1904, may be found the following words and figures, to wit:

Docket entries.

THE UNITED STATES EX RELATIONE R. W. Drury and John Dowd, *vs.* EDWARD LEWIS, WARDEN OF THE common jail of Allegheny County, Pennsylvania.	Petition for writ of habeas corpus, filed February 8th, 1904, and same day presented in open court and writ awarded as prayed for.

1904, February 8th, writ of habeas corpus issued, directed to Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, commanding him to produce forthwith the bodies of Ralph W. Drury and John Dowd, now in his custody, before the judges of this court.

"Served at Pittsburgh, Pennsylvania, on Friday, February 8th, 1904, on Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, by making known to him and giving him said writ, of which this is a true copy.

"So answers STEPHEN P. STONE,
"*United States Marshal.*"

1904, March 8th, Edward Lewis, warden of the common jail of Allegheny County, above-named respondent, in compliance with the writ of habeas corpus, to me directed (which writ is hereto attached), do now this 8th day of February, 1904, produce here in court the bodies of Ralph W. Drury and John Dowd, as in said writ commanded. And I further answer and make return as directed in said writ, that said Ralph W. Drury and John Dowd are in my custody in pursuance of a commitment (a copy of which is hereto attached and made part hereof) issued out of the Court of Oyer and Terminer of Allegheny County, Pennsylvania, based upon an indictment found at No. 13, December ses-
2 sions, 1903, of said court, charging them in the first count thereof, with murder and in the second count thereof with manslaughter.

EDWARD LEWIS,
Warden of Allegheny County Jail.

And now, February 8th, 1904, the bodies of Ralph W. Drury and John Dowd being now here produced in open court in obedience to the writ of habeas corpus, it is now ordered that the said petitioners, Ralph W. Drury and John Dowd be released in giving bond in the sum of five thousand (5,000.00) dollars, conditioned for their appearance on February 22nd, 1904, at 10 o'clock a. m., to abide the decision and order of the court that may be then and there made, and not to depart the court without leave and further order of the court.

M. W. ACHESON,
Circuit Judge.

And now, February 8th, 1904, bond of Ralph W. Drury and John Dowd, with H. P. Bope as surety, conditioned for the appearance of said

Ralph W. Drury and John Dowd in this court on February 22nd, 1904, executed, approved, and filed.

1904, February 22nd, this cause came on to be heard upon the petition of relators and answer of Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, before the Honorable Marcus W. Acheson; James S. Young and D. M. Miller, esqs., appearing for the United States ex relatione, and John C. Haymaker and John Marron, esqs., for the said Edward Lewis, warden, and the taking of testimony proceeds. Witnesses for the United States: W. D. Fairchild, Ralph W. Drury, J. W. McFarland, M. D., E. B. Howarth, E. B. Robertson, John Dowd. Tuesday, February 23rd, 1904, trial proceeds, John Dowd resumes testimony. W. D. Fairchild recalled. Patrick O'Keefe, N. W. Backus, Edward Krause, Richard Jones, Joseph T. Kirk,
3 H. A. Statenfield, J. T. Evans, Geo. B. Simpson, G. W. McCartney, D. J. Lomax, Jerry Kenna, Geo. Swartz, Banjamin Kurtz, Geo. D. Du Barry, Frederick Brennan, Louis Brown, Florence Weiler, William Moore, Thomas S. Ailes, Samuel T. Riddle, Ada Claypole, and Emma Cooper.

Wednesday, February 24th, 1904, defendants open and call Mattie Terwilliger.

1904, February [illegible]th, cause argued, C. A. V.

1904, April 28th, opinion filed directing that an order will be made discharging the writ of habeas corpus and remanding the petitioners to the warden of the jail of Allegheny County.

And now, June 24th, 1904, this cause having come on heretofore to be heard upon a writ of habeas corpus, return testimony taken and evidence submitted, and having been duly argued by counsel, upon due consideration, the court now orders, adjudges, and decrees that the writ of habeas corpus be discharged and that the said R. W. Drury and John Dowd be remanded to the custody of Edward Lewis, the warden of the jail of the county of Allegheny, State of Pennsylvania, in accordance with the opinion of the court heretofore filed.

By the court.

M. W. ACHESON, *Circuit Judge.*

1904, June 24th, petition for appeal filed. Eo die, assignments of error filed.

And now, June 24th, 1904, it is ordered that the appeal be allowed as prayed for, and bail to be given by said relators and petitioners, R. W. Drury and John Dowd is hereby fixed in the sum of five thousand (5,000) dollars, and it is further ordered that the clerk of this court send up therewith to the Supreme Court of the United States, a transcript
4 of the petition, writ of habeas corpus, testimony taken and other proceedings, and opinion of the court duly authenticated in accordance with section 764–765 and the act of March 3rd, 1885, of the Revised Statutes of the United States.

M. W. ACHESON, *Circuit Judge.*

1904, June 24th, bond sur appeal of R. W. Drury and John Dowd in the sum of five thousand ($5,000.00) dollars with H. P. Bope as surety conditioned that said R. W. Drury and John Dowd shall appear to answer the judgment of said Appelate Court, executed and filed.

And now, to wit, June 24th, 1904, the foregoing recognizance approved and it is thereupon ordered that the said R. W. Drury and John Dowd be enlarged pending appeal to the Supreme Court of the United States under and subject to the conditions of the within recognizance.

M. W. ACHESON, *Circuit Judge.*

1904, June 24th, bill of exceptions sealed and filed.

5 In the Circuit Court of the United States for the Western District of Pennsylvania.

THE UNITED STATES EX REL. RALPH W. Drury and John Dowd,
vs.
EDWARD LEWIS, WARDEN OF THE COMMON jail of Allegheny County, Pennsylvania.
} No. 1, May term, 1904.

Petition for writ of habeas corpus.

To the honorable, the judges of the said court:

The petition of Ralph W. Drury and John Dowd, respectfully presents:

That they are now, and were on the 10th day of September, A. D., 1903, in the military service of the United States, your petitioner, Ralph W. Drury, being duly commissioned as a second lieutenant in Company C, 9th Regiment, United States Infantry, and your other petitionor, John Dowd, being enlisted as a private in Company A, 9th Regiment United States Infantry.

That they are now restrained of their liberty by, and are under the custody of one Edward Lewis, warden of the common jail of Allegheny County, in the State of Pennsylvania, and within this district, in violation of the Constitution and laws of the United States.

That said warden restrains them of their liberty and holds them in his custody by virtue of a commitment issued out of the court of oyer and terminer for the county of Allegheny and Commonwealth of

6 Pennsylvania, on the 8th day of February, A. D. 1904.

Said commitment is based on an indictment found at No. 13, December sessions, 1903, of said court of oyer and terminer which charges your petitioners, in the first count thereof, with the murder, on the 10th day of September, A. D. 1903, of one William H. Crowley, and in the second count thereof, with the manslaughter of the said Crowley on the same date. A copy of said indictment, marked "Exhibit A," is hereto attached and made a part hereof.

And your petitioners further represent unto your honorable court that they did not unlawfully make an assault upon and kill the said William H. Crowley, as charged in the aforesaid indictment, but did the acts upon which the said indictment is founded while acting within the scope of their authority and performing their duty as soldiers in the military service of the United States, and in obedience and pursuant to the laws thereof. That is to say, on September 10th, 1903, the date mentioned in said indictment, your petitioner, Ralph W. Drury, was a commissioned officer of the United States Army, as aforesaid, having under his command a

detachment of enlisted men, stationed at the Allegheny Arsenal, in Pittsburgh, Pennsylvania, said arsenal being a subpost of Fort Niagara, New York, for the purpose of guarding and protecting certain Government stores and property there located. Your other petitioner, John Dowd, on the day and date last aforesaid, was a private in the United States Army, stationed at the said Allegheny Arsenal, under the command of said Ralph W. Drury. Shortly before September 10, 1903, the date of the offense charged in the aforesaid indictment, a person or persons unknown to your petitioners had committed certain larcenies and other depredations upon the Government property at the said Allegheny
7 Arsenal, to wit, had feloniously ripped and stolen certain copper from said arsenal buildings, and had stolen certain other goods and property of the United States from said buildings. Information of said larcenies and other depredations having come to your petitioner, Ralph W. Drury, he communicated said information to the commanding officer of Fort Niagara, New York, his superior officer, who thereupon, in conjunction with said Drury, made an investigation thereof and then ordered your petitioner, Drury, to apprehend and arrest any person or persons committing said larcenies and other depredations.

That your petitioner, Ralph W. Drury, acting in pursuance of said order and in pursuance of his duty as commanding officer of said arsenal, ordered and instructed the men in his detachment, among them your petitioner John Dowd, to be specially vigilant in protecting and guarding the Government property, and to put forth special efforts to apprehend and arrest the person or persons engaged in said larcenies and other depredations. That on the morning of September 10th, 1903, the date mentioned in the indictment, said Ralph W. Drury received information to the effect that certain persons were then engaged in stealing copper from a certain building on said arsenal grounds. Whereupon said Ralph W. Drury immediately ordered out a detail of soldiers consisting of four men, with their arms, among them your petitioner, John Dowd, with instructions to proceed to the point where the larceny was being committed and to apprehend and arrest the persons engaged therein. Your petitioner, Ralph W. Drury, accompanied said detail. When said detail reached a point near the place where said larceny was being committed certain persons who were engaged in said larceny fled from the arsenal grounds and from said detail;
8 and that one of the persons so engaged in the larceny of the Government property and fleeing from said grounds and from the detail was William H. Crowley, who is mentioned in the indictment aforesaid as having been assaulted and killed by your petitioners.

That John Dowd, one of your petioners, acting in obedience to and in pursuance of said orders of Ralph W. Drury, his superior and commanding officer, and of his duties as a soldier, followed said William Crowley, calling upon him several times to halt, which command not being obeyed by said Crowley, was again twice repeated by your petitioner Dowd, with a warning each time that he would fire unless said command was obeyed; and that these commands with the accompanying warnings being disobeyed by said Crowley, who continued to flee from arrest and was about to disappear and escape behind certain lumber piles near said arsenal, when said John Dowd, being unable to perform his duties as a soldier, and to carry out the orders of his said superior officer by any other means, and with intent to bring said Crowley to a halt rather than

to kill or seriously wound him, fired upon and wounded said Crowley, which wound subsequently resulted in the death of said Crowley.

And it is also represented to your honorable court that your petitioner, Ralph W. Drury, having taken a different route than that followed by said John Dowd, to the point where the larcenies aforesaid were being committed, did not arrive at the locality of the shooting until after said William H. Crowley had been wounded as aforesaid, and is connected with said shooting only by reason of the fact that he gave the orders to his said detachment and detail of soldiers, among them the said

9 John Dowd, to arrest the persons committing larceny upon the Government property as aforesaid.

Your petitioners therefore, showing to your honorable court that they are in the military service of the United States, and are restrained of their liberty contrary to the Constitution and laws of the United States, and are in the custody of the of said warden of the Allegheny County jail for an act or acts done by them in pursuance of the laws of the United States, and while engaged in good faith in the performance of their duties and within the scope of their authority, pray your honorable court for a writ of habeas corpus directed to said Edward Lewis, warden of the common jail of Allegheny County, commanding him to produce forthwith the bodies of your petitioners before your honorable court; and that your honorable court will summarily hear them and inquire of their unlawful and unjust detention, and discharge them from said unlawful custody, as law and justice require.

And they will ever pray, etc.

RALPH W. DRURY.
JOHN DOWD.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, a notary public in and for said county and State, personally appeared Ralph W. Drury and John Dowd, who, being duly sworn according to law, depose and say that the facts set forth in the above petition are correct and true, as they verily believe.

RALPH W. DRURY.
JOHN DOWD.

Subscribed and sworn to before me this 8th day of February, A. D. 1904.

[SEAL.] HARVEY M. MILLER,
Notary Public.

My commission expires January 19th, 1907.

10 And now, to wit, February 8th, 1904, the foregoing petition presented in open court and upon consideration thereof, and upon motion of James S. Young, United States attorney, it is ordered that a writ of habeas corpus issue directed to Edward Lewis, warden of the common jail of Allegheny County, Pennsylvania, in this district, commanding him to produce the bodies of Ralph W. Drury and John Dowd, the within named petitioners, in this court at the city of Pittsburgh forwith; and also make return of his authority for the detention of said petitioners.

M. W. ACHESON,
Circuit Judge.